

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

APR 13 1976

FILE: B-179186

DATE:

MATTER OF: Department of Interior - Reconsideration of Mine
Inspectors' Compensable Traveltime

- DIGEST:
1. Mine inspectors who work first-40-hour workweeks may be compensated for time spent in travel on official business during their first 40 hours. Any time spent in nontravel work after first 40 hours is compensable overtime. B-179186, October 24, 1973, modified.
 2. Mine inspectors' travel, which due to nature of the mine inspection work is found to be an inherent part of and inseparable from their work, is compensable as regular or overtime work. However, mine inspectors are prohibited from receiving overtime compensation for any time they spend in training under the Government Employees Training Act. 5 U.S.C. § 4109. B-179186, October 24, 1973, modified.

This decision involves a request from James T. Clarke, Assistant Secretary of the Interior, for reconsideration of our decision B-179186, October 24, 1973. That decision concerned the payment of overtime compensation to inspectional employees of the Bureau of Mines, Department of the Interior, who performed a substantial amount of travel away from their official duty stations.

BACKGROUND

In decision B-179186, *supra*, we stated that with regard to those employees whose workweek was the first 40 hours of duty, hours of duty or hours worked included " * * * all time during which an employee is required to be on duty at his headquarters or to be at a prescribed work place and time spent in travel to and from a prescribed place of duty will not be considered hours of duty unless such travel qualifies under one of the four considerations specified in 5 U.S.C. § 5542(b)(2)(B). " Therefore, we held that Bureau of Mine inspectors who worked a first-40-hour workweek were improperly paid overtime compensation for time spent in traveling to and from their work. We

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held further that the overpayments made were subject to waiver under 5 U.S.C. § 5584 and the implementing regulations in 4 C.F.R. § 91, et seq.

The Assistant Secretary of the Interior, by letter of April 17, 1975, states that we were not provided with certain pertinent information which he believes would have altered our decision. The attachments to his letter contain that information for our review.

The basic submission attached to the Assistant Secretary's letter states that the validity of the Bureau of Mines regulations ^{1/} with regard to compensating the traveltime of inspectional employees has been placed in doubt by our decision, even though we did not find the regulations to be invalid.

To assist our review, the submission describes the statutory requirements for a vigorous mine safety inspectional system. It states that, in order for the mine safety inspectional system to work properly, mines must be subject to inspection at all hours, even if they are located in remote areas. Moreover, so that a thorough inspection may take place, it may be necessary for the mine to be under constant inspection for several days in a row. The submission states further:

"In those areas where mining activities are heavily concentrated, the inspection workforce usually engages in travel of relatively short distances within one workday. Overnight accommodations are not involved. Upon completion of their inspection activities, they usually return to their headquarters office to turn in their automobiles and equipment and prepare reports associated with the inspection activities.

"In areas where mining operations are widely dispersed, inspectors usually report to their headquarters office for their assignments, autos and equipment at the beginning of their workweek.

^{1/} Bureau of Mines is now supplanted by the Mining Enforcement and Safety Administration which is in the process of issuing its own regulations.

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They drive, sometimes for a whole day, to a location close to the first inspection site. After completing the inspection they drive to the next mining site selected for inspection. Under these circumstances, they may remain in the field for a full workweek and sometimes longer without returning to their headquarters office. Reports are usually prepared at their motel accommodations after the inspection has been completed. In addition, inspectors may be required to report at any hour on short notice to their headquarters office to pick up vehicles and equipment to participate in mine rescue operations or other emergency or disaster operations.

"Travel by automobile is a necessity in performing these tasks due to the locations of the mines, the travelling required upon a mine site, the mobility required of the inspectors, and the equipment which must be used. For example, an inspector must take with him for use during a typical safety inspection: permissible methane detector, permissible flame safety lamp, roof-testing device, roof-bolt finishing bit gage, anemometer (to measure wind velocity), measuring tape and rule, smoke tubes and aspirating bulb, feeler gages, self-rescuer device, rock dust collecting equipment, containers for mine dust samples, bottles for air samples and miscellaneous items such as cards, notices of violations, copies of the law and other information data as well as personal paraphernalia. When the same inspector is also examining health conditions at the same time he would carry with him enough air and dust samplers for each miner to carry with him while performing his job (plus spares) as well as sampler head assemblies and filter cassettes to go with them, a personal sampler field calibrator and a noise level meter and calibrator."

The submission also states that the statute requires education and training of mine operators and miners in accident prevention and demonstrations of heavy mine rescue apparatus.

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DISCUSSION AND OPINION

Section 5542(b)(2) of title 5 of the United States Code (1970), as amended, states the following with respect to compensating an employee for time spent in travel:

"(2) time spent in a travel status away from the official-duty station of an employee is not hours of employment unless--

"(A) the time spent is within the days and hours of the regularly scheduled administrative workweek of the employee, including regularly scheduled overtime hours; or

"(B) the travel (i) involves the performance of work while traveling, (ii) is incident to travel that involves the performance of work while traveling, (iii) is carried out under arduous conditions, or (iv) results from an event which could not be scheduled or controlled administratively."

There is no doubt that under subsection 5542(b)(2)(A), an employee having a regularly scheduled workweek must be compensated for any time spent in travel on official business which is within his regularly scheduled work hours. Moreover, any overtime work performed by such an employee is compensable even though the work became overtime solely because travel was performed during regular work hours.

We have reconsidered our previous decision in light of the additional information presented and find that it was unnecessarily restrictive. It is now our opinion that there is no need to differentiate between an employee with a fixed tour of duty who must travel from one site to another after reporting for work at one location and an employee who must of necessity have a work schedule consisting of the first 40 hours of work and who must perform similar travel after working at his first work site. Accordingly, if after commuting to headquarters or another work site from his home a first-40-hour employee is ordered to perform travel, such traveltime is compensable within the first 40 hours and any time spent in nontravel work after the first 40 hours is compensable overtime. However, travel performed after the first 40 hours of work is not compensable unless it meets the conditions described in 5 U. S. C. § 5542(b)(2)(B).

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The Civil Service Commission has explained the limited conditions in section 5542(b)(2)(B), under which traveltime is considered hours of work, in section 3b(2) of subchapter S1, Federal Personnel Manual (FPM) Supplement 990-2, Book 550. However, subparagraph (c)(v) of said section 3b(2) states that those conditions are not applicable in certain circumstances, as follows:

"(v) The above conditions do not apply to work situations involving travel which is an inherent part of, and inseparable from, the work itself. In such events when an agency determines that the travel represents an additional incidental duty directly connected with the performance of a given job, and is therefore considered to be an assigned duty, the time spent in travel is work time and will be payable at regular or overtime rates, as appropriate. (See Comptroller General decisions B-146389, February 1, 1966, and B-163042, May 22, 1968.)"

Our decisions B-146389, February 1, 1966, and B-163042, May 22, 1968, which relied on B-143074, September 29, 1960, sanctioned the agency practice of treating as compensable traveltime, travel which is an inherent part of and inseparable from the work itself. In B-143074, *supra*, we held it was proper for the Army to prescribe by regulation that the traveltime of a survey party between assembly point and survey site was inherent to the work at the survey site and was thus compensable as work. In B-146389, *supra*, we approved regulations of the Federal Aviation Administration (FAA) which stated that employees who reported to headquarters, received assignments, picked up vehicles, tools, and supplies and then traveled to one or more facilities for maintenance work, may be paid compensation for such traveltime since the FAA found that the traveltime was a part of the established tour of duty.

The pertinent Bureau of Mines regulation concerning the compensation of inspectional employees for time spent in travel is found at Part 370, Bureau of Mines Manual, chapter 610, subchapter 1.11.B, July 16, 1970:

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"B. Travel which is an inherent part of, and inseparable from the work itself. In those work situations where a determination can be made that the travel represents an additional incidental duty directly connected with the performance of a given job, and is therefore considered to be an assigned duty, the time spent in travel is work time, compensable at regular or overtime rates, as appropriate. It has been administratively determined that travel is an incidental part of the officially assigned duties of employees in the following situations:

- "(1) Employees performing mine inspection work. Employees in this group report to a headquarters office or other official duty station at the beginning of the work day or work week to pick up Government vehicles. They then drive these vehicles, transporting mine inspection equipment, to one or more worksites where they perform mine inspection work. During or at the end of the workday or workweek, they return to their official duty station to turn in Government vehicles and prepare reports on inspections. The time spent in traveling from the official duty station to the mine or other worksite and back, and between worksites, is worktime for pay purposes.
- "(2) If, after an employee completes his duties at a temporary worksite, he is required to return to his post of duty to perform additional tasks, such as cleaning or recharging equipment that must be ready for his use the next day, or obtaining necessary supplies, his tour of duty for that day does not end until he has performed the required additional tasks. In such cases the travel time between his temporary post of duty and his regular post of duty constitutes a part of the hours of duty of the employee for that day.

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The Bureau of Mines has thus administratively determined that the travel performed by mine inspectors is travel which is an inherent part of and is inseparable from the work mine inspectors perform. We see no basis to differ with this administrative determination since the inspectional employees must constantly be traveling to perform their job. We conclude, therefore, that the travel performed by the mine inspectors comes within the rule stated in our previous decisions, B-143074 and B-146389, supra.

We recognize that those decisions involved employees who were not in a travel status and who returned to their official duty station after performing the travel at the end of the day. There is a remaining question, therefore, as to whether an inspectional employee who is away from his official duty station for a period of time longer than 1 day, may also be compensated for such travel time.

It is not reasonable that the determination of whether the travel-time is compensable or not should rest on whether the mine inspector is able to complete his assignment and return to his official station within 1 day or whether he must take more than 1 day from his official duty station to complete his assignment. Rather, the basic reason here for treating traveltime as compensable is that the travel is found to be an inherent or inseparable part of the work. Once the travel is determined to be an inherent and inseparable part of a mine inspector's work, it must follow that this travel is an inherent and inseparable part of his work whether the inspector's assignment is performed within 1 day or whether it is performed over a longer period of time during which the mine inspector is away from his official duty station.

Accordingly, we would approve the payment of compensation for traveltime performed by a Bureau of Mines inspector, if otherwise found proper, under the above Bureau of Mines regulations, whether such travel time was performed when the inspector departed from and returned to his official duty station within 1 day or whether he took more than 1 day away from his official duty station to accomplish his assignment.

Considering the above, we find that the payments made to mine inspectors (other than those who are in training) whose jobs are covered by the Bureau of Mines regulations for time spent in travel either within or after their first 40 hours are proper. Therefore, no waiver action in connection with such payments is necessary.

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However, we also found in B-179186, October 24, 1973:

"* * * that one of the employees, Mr. Gary R. Milton, was a trainee and was paid a total of \$466.60 overtime compensation while engaged in training. The authority for training of civilian employees is provided by 5 U.S.C. 4101-4118 and such training may be either through the use of Government or non-Government facilities. Under the regulations of the Civil Service Commission issued pursuant thereto, overtime compensation is precluded except under specified circumstances which do not appear applicable here. 5 CFR 410.602."

We are presented with no legal justification to change the above-quoted part of our prior decision. Accordingly mine inspectors who may otherwise be covered by the rules set out above, but who are in training, may not properly receive overtime compensation while in training and any overpayments paid to them in violation of this rule are for recovery unless waived under 5 U.S.C. § 5584 and the implementing regulations in 4 C.F.R. § 91, et seq.

Decision B-179186, October 24, 1973, is modified accordingly.

R.F.KELLER

Deputy

Comptroller General
of the United States